

** NOT FOR PRINTED PUBLICATION **

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

ERIC WATKINS

§

VS.

§

CIVIL ACTION NO. 1:11cv651

LAWRENCE WESTON

§

ORDER OVERRULING OBJECTIONS AND ACCEPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Eric Watkins, proceeding *pro se* and *in forma pauperis*, brought the above-styled lawsuit against Lawrence Weston.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. For the reasons set forth in the Report, plaintiff's complaint fails to state a claim upon which relief may be granted. Further, plaintiff's claim that the defendant failed to deliver a written report of his findings does not contest the validity of the disciplinary proceeding; thus, it is barred by limitations. Since plaintiff was released prior to filing this action, neither the exhaustion requirement set forth

in 42 U.S.C. § 1997e, nor the tolling of limitations as provided for in *Harris v. Hegmann*, 198 F.3d 153, 158 (5th Cir. 1999), apply. Therefore, as plaintiff complains of an incident which occurred on February 10, 2009, the claim is barred by the applicable two-year statute of limitations.

ORDER

Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ACCEPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So ORDERED and SIGNED, Aug 16, 2021.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark
Senior Judge